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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**  
**BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

In the Patent Application of: Ervin Wagner

Serial No.: 10/633,807

Filed: August 4, 2003

For: Sports Skills Training Method and Apparatus

Examiner: Raleigh W. Chiu

Group Art Unit: 3711

**APPEAL BRIEF**

Mail Stop Appeal Brief-Patents  
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Sir:

This is an Appeal Brief pursuant to 37 C.F.R. §41.37 in support of Applicant's appeal of the Final Rejection of the Examiner, mailed July 14, 2006, of claims 1-4 and 10-17. Each of the topics required by 37 C.F.R. §41.37 is presented herewith and is labeled appropriately.

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### **III. REAL PARTY IN INTEREST**

The applicant, Ervin Wagner, is the real party in interest of the present application.

#### **IV. Related Appeals and Interferences**

There are no appeals or interferences related to the present application of which Appellant or Appellant's legal representative are aware.

### **V. STATUS OF CLAIMS**

Claims 1-50 were present in the application as filed. Apparatus claims 21-50 are withdrawn from consideration as directed to a non-elected invention. Method claims 5-9 are withdrawn from consideration pending allowance of a generic claim as directed to non-elected species. Method claims 1-4, and 10-20, presented in the Claims Appendix, are pending in the application. Claims 1-4 and 10-17 have been twice rejected by the Examiner. Claims 18-20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Applicant has requested that the requirement to rewrite claims 18-20 in independent form be deferred until the status of base claim 10 is determined.

Applicant hereby appeals the rejection of claims 1-4 and 10-17.

**VI. STATUS OF AMENDMENTS**

No amendments were filed subsequent to the final rejection, and all amendments have been entered.

## **VII. SUMMARY OF CLAIMED SUBJECT MATTER**

As called for in claim 1, the claimed invention comprises a method for training sports skills for a game conducted on a playing surface that includes striking a game object away from an opponent.<sup>1</sup> The method comprises the steps of sequentially projecting a plurality of game objects toward one portion of the playing surface (5) for striking by one or more players (10) being trained, *Application*, p. 5, ¶[0022], ln. 3-6, *Fig.3*; *Application*, p. 6, ¶[0023], ln. 2-3, *Fig. 1*, and sequentially causing one or more opponents (12 or 22) to appear at one or more locations on the playing surface (5), *Application*, p.5, ¶[0022], ln. 8-10, *Fig. 3*; *Application* p.6, ¶[0023], ln. 3-4, *Fig. 1*; and *Application*, p. 15, ¶[0032], ln. 1-4, *Figs. 8-15*, in connection with projection of a game object (by a trainer 11 or by a ball machine 21) *Application*, p. 5, ¶[0022], ln. 12-18, *Fig.3*; *Application*, p.6, ¶[0023], ln. 4-5, *Fig. 1*; *Application*, p. 9, ¶[0026], ln. 3-6, *Fig. 1*, to train the player (10) to strike the game objects away from an opponent(s) (12 or 22), *Application*, p. 5-6, ¶[0022], ln. 18-33, *Fig. 3*; *Application*, p. 9, ¶[0026], ln. 6-15. Appellant notes that as used in this application opponents can be persons or simulated opponents, *Application*, p. 5, ¶[0022], ln. 9-10. Further, appellant notes that as used in this application “simulated opponent” means a mechanical opponent, *Application*, p. 15-24, ¶[0032-0039], *Figs. 8-15*.

In the claimed invention, as set forth in dependent claim 2, the step of sequentially causing one or more opponents (12 or 22) to appear can comprise operating one or more simulated opponents (12 or 22) *Application*, p. 5, ¶[0022], ln. 9-10, *Fig. 3*; and *Application*, p. 6, ¶[0023], ln. 3-4, *Fig.1*, to simulate the play of one or more players having a selected skill level *Application*, p. 6, ¶[0022], lines 24-33, *Fig.3*; *Application*, p. 9, ¶[0026], ln. 6-9, *Fig. 1*.

As called for in claim 10, the claimed invention comprises a method for training tennis skills of a tennis player (10) comprising sequentially projecting a plurality of tennis balls toward

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<sup>1</sup> 37 CFR §41.37(c)(1)(v) requires reference to the specification by page and line number. The Application was filed with page numbers and paragraph numbers but not line numbers. Thus, references to the specification are given by page number, paragraph number and the line number of the referenced paragraph.



one side of a tennis court (5) for return by the tennis player (10), *Application*, p. 5, ¶[0022], ln. 3-6 and 12-14, Fig.3; *Application*, p.6, ¶[0023], ln. 2-3, Fig. 1; *Application* p.7, ¶[0024], ln.1-2, Fig. 1, and sequentially causing one or more opponents (12 or 22) to appear at one or more locations on the opposite side of the tennis court (5) (opponents can be persons or simulated opponents as noted above with respect to claim 1), *Application*, p.5, ¶[0022], ln. 8-10, Fig. 3; *Application* p.6, ¶[0023], ln. 3-4, Fig. 1; and *Application*, p. 15, ¶[0032], ln. 1-4, Figs. 8-15, in connection with projection of a tennis ball (by a trainer 11 or by a ball machine 21) *Application*, p. 5, ¶[0022], ln. 12-18, Fig.3; *Application*, p.6, ¶[0023], ln. 4-5, Fig. 1; *Application*, p. 9, ¶[0026], ln. 3-6, Fig. 1, to train the player (10) to return tennis balls away from an opponent(s) (12 or 22), *Application*, p. 5-6, ¶[0022], ln. 18-33, Fig. 3; *Application*, p.9, ¶[0026], ln. 1-11, Fig. 1, thereby teaching the tennis player (10) to play the tennis court (5) and training placement memory in the brain of the tennis player (10) in addition to training muscle memory by returning the tennis balls *Application*, p. 9, ¶[0026], ln. 11-15, Fig.1.

In the claimed invention, as set forth in dependent claim 14, the step of sequentially causing one or more opponents (12 or 22) to appear can comprise operating one or more simulated opponents (12 or 22), *Application*, p. 5, ¶[0022], ln. 9-10, Fig.3; and *Application*, p. 6, ¶[0023], ln. 3-4, Fig. 1, to simulate the play of one or more tennis players having a selected skill level, *Application*, p. 6, ¶[0022], ln. 24-33, Fig. 3; and *Application*, p. 9, ¶[0026], ln. 6-9, Fig. 1.

In the claimed invention, as set forth in dependent claim 15, the step of operating the one or more simulated opponents can comprise operating one or more simulated opponents (32), *Application*, p. 11, ¶[0028], ln. 13-14, Fig.4, to simulate one or two tennis players moving to a plurality of locations on the opposite side of the tennis court (5) *Application*, p. 11-12, ¶[0028], ln. 14-21, Fig.4.

In the claimed invention, as set forth in dependent claim 16, the simulated opponents can comprise a plurality of stationary simulated opponents (30), *Application*, p. 10, ¶[0027], ln. 6-

12, Fig.3A, and the step of operating the one or more simulated opponents (30) comprises operating selected ones of said simulated opponents to cause an opponent to selectively appear at said one or more locations, *Application*, p. 10, ¶[0027], ln. 15-19, Fig.3A.

In the claimed invention, as set forth in dependent claim 17, the simulated opponents can comprise one or more movable opponents (32), *Application*, p. 11, ¶[0028], ln. 13-16, Fig.4, and the step of operating the one or more simulated opponents (32) comprises operating selected ones of the simulated opponents (32) to move the one or more simulated opponents (32) to selectively appear at one or more locations on the opposite side of tennis court (5), *Application*, p. 11-12, ¶[0028], ln. 14-32, Fig.4.

**VIII. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL**

In Office Action of July 14, 2006, the Examiner rejected claims 1-4 and 10-17 as follows: Claims 1-4 and 10-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reinprecht (U.S. Patent No. 5,709,620) and applicant's admission of the prior art. Applicant disagrees with the Examiner's assertion that Reinprecht and applicant's admission of the prior art renders claims 1-4 and 10-17 obvious to one skilled in the art.

## **IX. ARGUMENT**

### **A. Claims 1-4 and 10-17 are not obvious in view of Reinprecht (U.S. Patent No. 5,709,620) and applicant's admission of the prior art.**

Reinprecht '620 is directed to training a player to strike or throw a ball or game object to one or more targets positioned on a playing surface in specific known in advance location(s). Appellant's invention is directed to a training method that trains a player to strike game objects away from an opponent. The difference is significant. Appellant has found that following typical training sessions such as disclosed by Reinprecht '620 a player tends to continue to strike game objects to the specific location(s) utilized in the training session, *Application*, p. 4, ¶[0021], lines 17-19. According to appellant's invention, a player being trained can be taught to play the court by training reaction time and placement memory in the brain of the player in addition to training muscle memory in returning the ball or game object, (emphasis added). *Application*, p 4. ¶[0021], ln. 14-16.

Reinprecht '620 discloses a "sport court training targeting device for assisting in the instruction of court sports ...", *Reinprecht '620*, col. 2, ln. 26-27. "... upon each of the five targeting panels are geometrically shaded target zones that assist the student or the instructor determine the accuracy of a serve, volley or shot. Once the targeting panels have been placed on the side of the court opposite the player, the instructor can take his or her position alongside the targeting panels and begin the serving or drill lessons", *Reinprecht '620*, col. 2, lines 49-55. Further, "... it is a principal object of the invention to provide a two-dimensional targeting device, having five panels, that plays a fundamental role, and is an essential tool in the professional tennis instructor's repertoire of instruction methods. Further, it is an essential feature of the present invention that the targeting panels provide the instructor with a tool that is both flexible and adaptable in its use and the practical application" (emphasis added), *Reinprecht '620*, col. 3, lines 4-11. "In a broader context, it is an object of the invention to provide a sport court training assemblage of targets for assisting in striking or throwing a ball or object to a specific location; ..." (emphasis added), *Reinprecht '620*, col. 3, lines 30 – 33. "... it is readily

appreciated that the teachings of the instant invention may be applied to virtually any sport having a court or like playing surface, where it is desirable to develop the skill of striking or throwing a ball or other object to a specific location; e.g., soccer, racquetball, squash, badminton, volleyball, paddle tennis, etc. (emphasis added), *Reinprecht '620*, col. 4-line 65- col. 5, line 3.

*Reinprecht '620* is clearly directed to training apparatus for training a player in striking or throwing a ball or object to a specific location, i.e. training muscle memory. Notwithstanding that the Examiner notes that *Reinprecht '620* discloses that "... the instructor can position the sport court training targets for creating difficult patterned drills, to mimic match scenarios, and develop playing strategies against the mimicked match scenarios", *Reinprecht '620*, col. 2, line 67-col. 3, line 3, *Reinprecht '620* only discloses a targeting drill, namely striking or throwing a ball or game object to a series of specific known in advance locations (emphasis added).

The Examiner attempts to cure the deficiencies of *Reinprecht '620* by expanding the *Reinprecht '620* disclosure without supporting evidence.

First, the Examiner stated that *Reinprecht '620* "... teaches the concept of placing targets at specific locations on the tennis court at which the students aim; striking balls to such locations (i.e., the corners as shown in Figure 1 of *Reinprecht*), are those designed to be shots away or out of reach by an opponent", *Office Action mailed July 14, 2006*, p. 2, ln. 13-18. Nothing in *Reinprecht '620* supports such a conclusion, and in fact in the game of tennis an opponent can assume any position on the tennis court and training to return the ball to one or more specific locations may in fact cause a tennis player to return the ball directly to the opponent.

Next, the Examiner stated:

"... it is old and well-known in the art for team coaches to place people on the court (tennis, basketball, football, etc.) to simulate how a particular point or play is supposed to develop. As *Reinprecht* introduces the concept of striking particular targets on the court to practice particular shots (down-the-line, crosscourt, etc.) in order to mimic certain or particular match scenarios, it would have been obvious to one of ordinary skill in the art to place a person at a location where a typical player/opponent might stand during that shot to better simulate actual game situations. The persons placed at these locations can be considered simulated opponents for practice purposes. Because tennis play is naturally dynamic, the simulated opponents would naturally and sequentially appear at different locations depending on (1) the direction of the particular ball projected

by the instructor and (2) the particular strategy attempted to be employed or scenario attempted to be portrayed. Also, the presence of the Reinprecht targets is considered to naturally train the player to hit the ball away from an opponent, i.e., it is a much more common tennis strategy to hit the ball away from, rather than to, an opponent.” *Office Action mailed July 14, 2006, p. 3, ln. 3-22* (emphasis added).

**1. The expansion of Reinprecht ‘620 is improper, which removes the basis for the obviousness rejection.**

The expansion of Reinprecht ‘620 by the Examiner based upon basic knowledge of the prior art (particularly the emphasized portions above) is not tenable as the Examiner has failed to provide evidence to support his conclusions about the modifications of Reinprecht ‘620 set forth above.

The standards for finding of obviousness must be strictly adhered to. Simply citing a prior art reference and then concluding that it would be obvious to modify the reference based on conclusions about basic knowledge of the prior art without supporting evidence is wholly inadequate.

A claimed invention is unpatentable if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art ... The ultimate determination of whether an invention would have been obvious under 35 U.S.C. §103(a) is a legal conclusion based on underlying findings of fact.<sup>2</sup>

A critical step in analyzing the patentability of claims pursuant to section 103(a) is casting the mind back to the time of invention, to consider the thinking of one of ordinary skill in the art, guided only by the prior art references and the then-accepted wisdom in the field ... **Close adherence to this methodology is especially important in cases where the very case with which the invention can be understood may prompt one “to fall victim to the insidious effect of a hindsight syndrome wherein that which on the invention taught is used against the teacher.”**

Most if not all inventions arise from a combination of old elements ... Thus, every element of a claimed invention may often be found in the prior art ... However, identification in the prior art of each individual part claimed is

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<sup>2</sup> The underlying factual inquiries include (1) the scope and content of the prior art; (2) the level of ordinary skill in the prior art; and (3) the differences between the claimed invention and the prior art. *Graham v. John Deere Co.*, 383 U.S. 1, 17, 15 L. Ed. 2d 545, 86 S. Ct. 684 (1966).

insufficient to defeat patentability of the whole claimed invention ... Rather, to establish obviousness based on a combination of the elements disclosed in the prior art, there must be some motivation, suggestion or teaching of the desirability of making the specific combination that was made by the applicant ... **Even when obviousness is based on a single prior art reference, there must be a showing of a suggestion or motivation to modify the teachings of that reference.**

The motivation, suggestion or teaching may come explicitly from statements in the prior art, the knowledge of one of ordinary skill in the art, or, in some cases the nature of the problem to be solved ... In addition, the teaching, motivation or suggestion may be implicit from the prior art as a whole, rather than expressly stated in the references ... The test for an implicit showing is what the combined teachings, knowledge of one of ordinary skill in the art, and the nature of the problem to be solved as a whole would have suggested to those of ordinary skill in the art ... Whether the Patent Office Examiner relies on an express or an implicit showing, **the Examiner must provide particular findings related thereto ... Broad conclusory statements standing alone are not evidence.**” *In re Werner Kotzab*, 217 F.3d 1365; 55 U.S.P.Q.2d (BNA) 1313 (Fed. Cir. 2000) (citations omitted) (emphasis added).

First, there simply is no basis for extending Reinprecht ‘620 by summarily concluding “As Reinprecht introduces the concept of striking particular targets ... it would have been obvious to one of ordinary skill in the art to place a person at a location where a typical player/opponent might stand during that shot to better simulate actual game conditions” *Office Action mailed July 14, 2006, p. 3, ln. 5-12*. Absent applicant’s disclosure, there is no evidence presented by the Examiner to support this conclusion other than the Examiner’s statement that “... it is old and well-known in the art for team coaches to place people on the court ...”, *Office Action mailed July 14, 2006, p. 3, ln. 2-3*. As stated by the Examiner, appellant has not disputed the Examiner’s statement that “... it is old and well-known in the art for team coaches to place people on the court ...” (the “prior art statement”). However, appellant does dispute that this statement provides evidence for conclusory statements the Examiner derives from, and builds on, in the prior art statement set forth below.

Next, the Examiner extends the unsupported expansion of Reinprecht ‘620 by stating “Because tennis play is naturally dynamic, the simulated opponents would naturally and sequentially appear at different locations depending on ... strategy attempted to be employed or scenario attempted to be portrayed” (emphasis added), *Office Action mailed July 14, 2006, p. 3*,

*ln. 13-18.* Absent appellant's disclosure, there is simply no evidence presented by the Examiner to support the conclusion that people placed on a tennis court "would naturally and sequentially appear at different locations".

Last, the Examiner states that "... the presence of the Reinprecht targets is considered to naturally train the player to hit the ball away from an opponent" (emphasis added), *Office Action mailed July 14, 2006, p. 3, ln. 18-20.* Absent appellant's disclosure, there is simply no evidence presented by the Examiner to support this conclusion, particularly since Reinprecht '620 is directed to training a player to throw or strike balls to specific targets, and does not disclose or suggest training a player to strike a ball away from either a target or an opponent.

Applicant challenged and traversed the Examiner's assertions regarding the basic knowledge in the art in the Amendment filed April 20, 2006, <sup>3</sup>*Amendment and Response to Office Action, filed April 20, 2006, p. 15-16.* Accordingly, applicant has more than adequately challenged and traversed the Examiner's assertion of basic knowledge of the art teaches or

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<sup>3</sup> Applicant challenges and traverses the additional assertions by the Examiner regarding basic knowledge in the art set forth for the first time in the November 15 Office Action in paragraph 3. Specifically, the Examiner asserted that "... placing actual people on the court to simulate a particular point would naturally allow for instructing a player to hit away from the simulated opponents ..."; "... it would have been naturally obvious for a coach, in placing people on the court, to illustrate a particular concept commensurate with the student's skill level ..."; "... by having a coach place people on the court, it is submitted that such would naturally allow the tennis player to train placement and muscle memory .."; and "... that the people situated on the court by the coach would naturally correspond to the recited simulated opponents ..".

Applicant respectfully submits that none of the above recited assertions by the Examiner has any evidentiary support, other than the disclosure in applicant's specification and claims. Further, and more importantly, none of the assertions by the Examiner in paragraph 3 of the November 15, 2005 Office Action suggest the method steps set forth in claim 1 "... sequentially projecting a plurality of game objects toward one portion of said playing surface ...; and sequentially causing one or more opponents to appear at one or more locations on said playing surface in connection with projection of a game object to train said player to strike game objects away from an opponent."(emphasis added); and in claim 10 "... sequentially projecting a plurality of tennis balls toward one side of a tennis court ...; and sequentially causing one or more opponents to appear at one or more locations on the opposite side of said tennis court in connection with projection of a tennis ball to train said tennis player to return tennis balls away from an opponent thereby teaching said tennis player to play the tennis court and training placement memory in the brain of said tennis player in addition to training muscle memory in the brain of said tennis player ..." (emphasis added).

Accordingly, applicant respectfully submits that applicant has more than adequately challenged and traversed the Examiner's assertion of basic knowledge of the art teaches or suggests modification of Reinprecht. Further, applicant respectfully submits that it is not appropriate to rely on the Examiner's assertion of basic knowledge of the art as the basis for modifying Reinprecht without evidentiary support. "It is never appropriate to rely solely on common knowledge in the art without evidentiary support in the record as the principal evidence upon which a rejection is based (emphasis added). *In re Zurko*, 258 F.3d at 1386, 59 USPQ2d at 1697; *In re Ahlert*, 424 F2d at 1092, 165 USPQ 421." MPEP §2144.03, E.



suggests modification of Reinprecht '620. As appellant set forth in the Amendment filed April 20, 2006 (see fn. 3 above), "It is never appropriate to rely solely on common knowledge in the art without evidentiary support in the record as the principal evidence upon which a rejection is based" (emphasis added). *In re Zurko*, 258 F.3d at 1386, 59 USPQ2d at 1697; *In re Ahlert*, 424 F2d at 1092, 165 USPQ 421." MPEP §2144.03, E.

The Examiner's assertions regarding basic knowledge in the prior art as a basis for expanding and extending Reinprecht '620 are nothing more than conclusory statements without support. The Examiner has made a four step expansion of Reinprecht '620: (1) "... it is well known in the art ... to place people on the court .."; (2) "... it would have been obvious to ... place a person at a location where a typical player/opponent might stand ..."; (3) "... the simulated opponents would naturally and sequentially appear at different locations ..."; and (4) "... the presence of Reinprecht targets is considered to naturally train the player to hit the ball away from an opponent ...", *Office Action of July 14, 2006*, p. 2-3, ¶ 2. Such conclusory assertions are not evidence.

The Examiner has expanded and extended Reinprecht '620 relying upon "broad conclusory statements standing alone" which can only lead to the conclusion that the Examiner is simply relying on impermissible hindsight reconstruction of Appellant's invention.

Reinprecht '620, even expanded and extended as proposed by the Examiner, does not disclose or suggest the training method including the steps "... sequentially projecting a plurality of game objects (tennis balls in claim 10) ... and sequentially causing one or more opponents to appear at one or more locations ... to train said (tennis in claim 10) player to strike game objects (return tennis balls in claim 10) away from an opponent ..." (emphasis added) called for in independent claims 1 and 10, and does not disclose or suggest the additional limitations set forth in dependent claims 2 and 14-17 all as set forth in detail below in **3. Reinprecht '620 in view of the applicant's admission of the prior art does not reach the claimed invention.**

**2. Examiner's Response to Arguments does not cure the deficiencies of Reinprecht '620.**

In the Office Action mailed July 14, 2006 the Examiner responded to applicant's arguments filed April 20, 2006. First, the Examiner stated "... it is noted here that as a natural consequence of training players to aim at specific targets, hitting such targets would also be known by those of ordinary skill in the tennis art to be indicative of those shots designed to be away from or out of reach by a potential opponent since generally, a tennis player achieves better results when hitting the ball away from, rather than to, his opponent", *Office Action of July 14, 2006, p. 5, l. 5-11*. The Examiner continues to ignore the express teaching of Reinprecht '620, namely to train student players to hit specific targets. The location of the targets as described by Reinprecht '620 may or may not be the correct place to hit the tennis ball depending on the location of the opponent. Even if the expansion and extension of Reinprecht '620 is, contrary to Appellant's arguments, proper there is nothing in Reinprecht '620 or in the acknowledged prior art (instructors sequentially hitting a plurality of game balls toward a student, *Application p.1, l. 3-8, ¶ [0001]*) that discloses or suggests a training method including the steps "... sequentially projecting a plurality of game objects (tennis balls in claim 10) ... and sequentially causing one or more opponents to appear at one or more locations ... to train said (tennis in claim 10) player to strike game objects (return tennis balls in claim 10) away from an opponent ..." (emphasis added) called for in independent claims 1 and 10, and, likewise, there is nothing that discloses or suggests the additional limitations set forth in dependent claims 2 and 14-17 all as set forth in detail below in **3. Reinprecht '620 in view of the applicant's admission of the prior art does not reach the claimed invention.**

Next, the Examiner stated "... as applicant has acknowledged, it is old and well-known in the art for coaches to place people on the court to simulate how a particular point is supposed to develop. Therefore, by having a coach place people on the court to simulate how a particular point is supposed to develop, combined with the Reinprecht concept of attempting to hit particular targets on the court, and combined with the knowledge that it is advantageous to hit balls at targets or locations that are away from an

opponent or out of an opponent's reach in a game of tennis, the claimed method of training a player to strike a tennis ball away from a opponent has been taught", *Office Action of July 14, 2006, page 5, l. 11-22*. As above, even if the Examiner's expansion and extension of Reinprecht '620, contrary to appellant's arguments, is proper, Reinprecht '620 as expanded and extended, fails to disclose or suggest a training method including the steps " ... sequentially projecting a plurality of game objects (tennis balls in claim 10) ... and sequentially causing one or more opponents to appear at one or more locations ... to train said (tennis in claim 10) player to strike game objects (return tennis balls in claim 10) away from an opponent ..." (emphasis added) called for in independent claims 1 and 10, and, likewise, fails to disclose or suggest the additional limitations set forth in dependent claims 2 and 14-17 all as set forth in detail below in **3. Reinprecht '620 in view of the applicant's admission of the prior art does not reach the claimed invention.**

Last, the Examiner stated "... as a consequence of practicing by repeatedly hitting balls at targets, one is considered to naturally train both placement and muscle memory since such memory is achieved by the constant repetition of strokes and the player's ability to remember it", *Office Action dated July 14, 2006, p. 5, l. 22 – p. 6, l. 3*. Examiner continues to miss the key difference between Reinprecht '620, even as modified and extended by the Examiner, and Appellant's invention. The difference is significant. Appellant has found that following typical training sessions such a disclosed by Reinprecht '620 a player tends to continue to strike game objects to the specific location(s) utilized in the training session. *Application, p. 4, ¶[0021], lines 17-19*. According to appellant's invention, a player being trained can be taught to play the court by training reaction time and placement memory in the brain of the player in addition to training muscle memory in returning the ball or game object, (emphasis added). *Application, p 4. ¶[0021], ln. 14-16*. The Examiner has not addressed or responded to the aspect of appellants invention in which one or more opponents are sequentially caused to appear to train the player to observe the position of the opponent as well as return the game object (tennis ball) thereby teaching the player to strike game objects (return tennis balls) away from an opponent as set forth in independent claims 1 and 10.

Even if the expansion and extension of Reinprecht '620 is, contrary to Appellant's arguments, proper Examiner's expansion and extension of Reinprecht '620 simply fails to disclose or suggest the invention called for in independent claims 1 and 10, and, likewise, fails to disclose or suggest the additional limitations set forth in dependent claims 2 and 14-17 all as set forth in detail below in **3. Reinprecht '620 in view of the applicant's admission of the prior art does not reach the claimed invention.**

**3. Reinprecht '620 in view of the applicant's admission of the prior art does not reach the claimed invention.**

Claims 1, 3-4 and 10-17 stand rejected under 35 U.S.C. §103(a) as allegedly unpatentable over Reinprecht '620 in view of the Examiner's assertion of well-known prior art. The rejection is traversed.

Even if the expansion and extension of Reinprecht '620 were proper, contrary to appellant's arguments, Reinprecht '620 as modified would not reach Applicant's invention as set forth in claims 1, 3-4 and 10-17.

**Claims 1 and 3-4**

Reinprecht '620, even expanded and extended as proposed by the Examiner, does not disclose or suggest the training method including the steps as called for in claim 1 "... sequentially projecting a plurality of game objects toward one portion of said playing surface for striking by one or more players being trained; and sequentially causing one or more opponents to appear at one or more locations on said playing surface in connection with projection of a game object to train said player to strike game objects away from an opponent". (emphasis added).

As noted in the Application, applicant recognized "... tennis players often train by returning balls projected by a ball machine or hit by a trainer to their side of a tennis court to develop their ball return skills." *Application, page 1, ¶ [0001], lines 6-8*. The targeting apparatus disclosed and taught by Reinprecht '620 is consistent with this acknowledged prior art, namely training players to throw or strike a ball or object to a specific target. While the game of tennis and other games involving throwing or striking balls or game objects away from an

opponent involve strategy, Reinprecht '620 specifically teaches or suggests training a player to strike game objects at targets, not away from an opponent as set forth in independent claim 1.

Further, while games involving throwing or striking balls or game objects away from an opponent involve strategy, those games do not involve the steps of "... sequentially projecting a plurality of game objects toward one portion of said playing surface for striking by one or more players being trained; and sequentially causing one or more opponents to appear at one or more locations on said playing surface in connection with projection of a game object ..." set forth in claim 1, (emphasis added).

In addition, modification of Reinprecht '620 as suggested by the Examiner would render Reinprecht '620 ineffective or inoperative for the purpose of Reinprecht invention, namely providing "target zones that assist the student or the instructor determine the accuracy of a serve, volley or shot ...", *Reinprecht '620, col. 2, lines 51 – 52*; "... to develop the skill of striking or throwing a ball or other object to a specific location ...", *Reinprecht '620, col. 5, lines 1 – 2*; "... accurate striking or throwing of a ball or object to one or more specific target areas of the playing surface ...", *Reinprecht '620, col. 6, lines 56 – 58*. "Placing actual people on the court to simulate a particular point" as suggested by the Examiner would disrupt and fundamentally change the invention disclosed and claimed by Reinprecht '620 namely, a training target assembly to assist in training an athlete to accurately strike or throw a ball or game object to a specific target. Accordingly, there is no suggestion or motivation to combine Reinprecht '620 and the Examiner's assertion of basic knowledge of the prior art other than impermissible hindsight. "If the proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is not suggestion or motivation to make the proposed modification." *In re Gordon, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984)*". *MPEP §2143.01, V*.

Even if it is accepted that it is known in the art "to place people on the court", none of the conclusory assertions by the Examiner in paragraph 2 of the July 14, 2006 Office Action discussed above at p. 14-16, *Office Action mailed July 14, 2006, ¶2, p. 2-3*, teach or suggest modifying Reinprecht '620 to provide the training method as claimed in claim 1. Placing people on a tennis court, together with the other broad conclusory statements by the Examiner, does not

disclose or suggest the steps as claimed in claim 1 “... sequentially projecting a plurality of game objects toward one portion of said playing surface ...; and sequentially causing one or more opponents to appear at one or more locations on said playing surface in connection with projection of a game object to train said player to strike game objects away from an opponent.” (emphasis added).

Even if, contrary to appellant’s arguments, all the Examiner’s conclusory assertions to modify Reinprecht ‘620 are accepted, the Examiner has failed to produce evidence disclosing or suggesting a method for training sports skills comprising: sequentially projecting a plurality of game objects toward one portion of the playing surface ... and sequentially causing one or more opponents to appear at one or more locations on the playing surface ... to train the player to strike game objects away from an opponent ... as called for in claim 1. Reinprecht ‘620 in view of the Examiner’s assertion of the prior art fails to disclose the invention of claim 1. Thus, Reinprecht as modified by the Examiner’s assertion of well-known prior-art, fails to satisfy the third criteria required to establish *prima facie* obviousness, namely that “all the claim limitations must be taught or suggested by the prior art”. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). *MPEP* §2143.03. Because claims 3-4 depend, directly or indirectly on claim 1, they are patentable for the same reasons.

Claims 1 and 3-4 are patentable over Reinprecht ‘620 in view of the Examiner’s assertion of well-known prior art. The rejection of claims 1 and 3-4 under 35 U.S.C. §103(a) should be overturned.

#### Claims 10-13

As with claim 1, Reinprecht ‘620, even expanded and extended as proposed by the Examiner, does not disclose or suggest the training method as called for in claim 10 “... sequentially projecting a plurality of tennis balls toward one side of a tennis court for return by said tennis player; and sequentially causing one or more opponents to appear at one or more locations on the opposite side of said tennis court in connection with projection of a tennis ball to train said tennis player to return tennis balls away from an opponent thereby teaching said tennis

player to play the tennis court and training placement memory in the brain of said tennis player in addition to training muscle memory by returning said tennis balls”

As noted in the Application, applicant recognized “... tennis players often train by returning balls projected by a ball machine or hit by a trainer to their side of a tennis court to develop their ball return skills.” *Application, page 1, ¶ [0001], lines 6-8*. The targeting apparatus disclosed and taught by Reinprecht ‘620 is consistent with this acknowledged prior art, namely training players to throw or strike a ball or object to a specific target. While the game of tennis and other games involving throwing or striking balls or game objects away from an opponent involve strategy, Reinprecht ‘620 specifically teaches or suggests training a player to strike game objects at targets, not away from an opponent as set forth in independent claim 10.

Further, while games involving throwing or striking balls or game objects away from an opponent involve strategy, those games do not involve the steps of “... sequentially projecting a plurality of tennis balls toward one side of a tennis court for return by said tennis player; and sequentially causing one or more opponents to appear at one or more locations on the opposite side of said tennis court in connection with projection of a tennis ball to train said tennis player to return tennis balls away from an opponent ...” set forth in claim 10 (emphasis added).

In addition, modification of Reinprecht ‘620 as suggested by the Examiner would render Reinprecht ‘620 ineffective or inoperative for the purpose of Reinprecht invention, namely providing “target zones that assist the student or the instructor determine the accuracy of a serve, volley or shot ...”, *Reinprecht ‘620, col. 2, lines 51 – 52*; “... to develop the skill of striking or throwing a ball or other object to a specific location ...”, *Reinprecht ‘620, col. 5, lines 1 – 2*; “... accurate striking or throwing of a ball or object to one or more specific target areas of the playing surface ...”, *Reinprecht ‘620, col. 6, lines 56 – 58*. “Placing actual people on the court to simulate a particular point” as suggested by the Examiner would disrupt and fundamentally change the invention disclosed and claimed by Reinprecht ‘620 namely, a training target assembly to assist in training an athlete to accurately strike or throw a ball or game object to a specific target. Accordingly, there is no suggestion or motivation to combine Reinprecht ‘620 and the Examiner’s assertion of basic knowledge of the prior art other than impermissible hindsight. “If the proposed modification would render the prior art invention being modified

unsatisfactory for its intended purpose, then there is not suggestion or motivation to make the proposed modification.” *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984)”.  
*MPEP* §2143.01, V.

Even if it is accepted that it is known in the art “to place people on the court”, none of the conclusory assertions by the Examiner in paragraph 2 of the July 14, 2006 Office Action discussed above at p. 14-16, *Office Action mailed July 14, 2006*, ¶2, p. 2-3, teach or suggest modifying Reinprecht ‘620 to provide the training method as claimed in claims 10-13. Placing people on a tennis court, together with the other broad conclusory statements by the Examiner, does not disclose or suggest the steps as claimed in claim 10 “... sequentially projecting a plurality of tennis balls toward one side of a tennis court ...; and sequentially causing one or more opponents to appear at one or more locations on the opposite side of said tennis court in connection with projection of a tennis ball to train said tennis player to return tennis balls away from an opponent thereby teaching said tennis player to play the tennis court and training placement memory in the brain of said tennis player in addition to training muscle memory in the brain of said tennis player ...” (emphasis added).

Even if, contrary to appellant’s arguments, all the Examiner’s conclusory assertions to modify Reinprecht ‘620 are accepted, the Examiner has failed to produce evidence disclosing or suggesting a method for training sports skills comprising: sequentially projecting a plurality of tennis balls toward one portion of the tennis court ... and sequentially causing one or more opponents to appear at one or more locations on the tennis court ... to train the player to strike game objects away from an opponent thereby teaching the tennis player to play the tennis court and training placement memory in the brain of the tennis player in addition to training muscle memory ... as called for in claim 10. Reinprecht ‘620 in view of the Examiner’s assertion of the prior art fails to disclose the invention of claim 10. Thus, Reinprecht as modified by the Examiner’s assertion of well-known prior-art fails to satisfy the third criteria required to establish *prima facie* obviousness, namely that “all the claim limitations must be taught or suggested by the prior art”. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). *MPEP* §2143.03. Because claims 11-13 depend, directly or indirectly on claim 10, they are patentable for the same reasons.



Claims 10-13 are patentable over Reinprecht '620 in view of the Examiner's assertion of well-known prior art. The rejection of claims 10-13 under 35 U.S.C. §103(a) should be overturned.

#### Claims 2 and 14

Reinprecht '620, even expanded and extended as proposed by the Examiner, does not disclose or suggest the training method as called for in claim dependent claims 2 (and 14) which call for the step of sequentially causing one or more opponents to appear to comprise "... operating one or more simulated opponents to simulate the play of one or more players (tennis players) having a selected skill level" (emphasis added).

Neither Reinprecht '620, nor the Examiner's assertion of well-known prior art disclose or suggest operating one or more simulated opponents to simulate the play of one or more players having a selected skill level. Reinprecht '620 discloses only stationary targets placed at certain positions on a tennis court or playing surface. The Examiner's assertion of well-known prior art to modify Reinprecht '620 does not include providing simulated opponents as that term is used by appellant in the application. As noted above in VII. Summary of Claimed Subject Matter, in this application, "opponents" can be persons or simulated opponents, *Application*, p.5, ¶[0022], ln. 9-10, Fig. 3, *Application* p.6, ¶[0023], ln. 3-4, Fig. 1, and *Application*, p. 15, ¶[0032], ln. 1-4, Figs. 8-15. "Simulated opponent" means a mechanical opponent, *Application*, p. 15-24, ¶[0032-0039], Figs. 8-15. The Examiner has provided no evidence suggesting or disclosing operating one or more simulated (i.e. mechanical) opponents to simulate the play of one or more players (or tennis players) have a selected skill level.

Accordingly, the combination of Reinprecht '620 and the Examiner's assertion of well-known prior art does not suggest or disclose the invention of claims 2 and 14. Thus, Reinprecht, as modified by the Examiner's assertion of well-known prior-art, fails to satisfy the third criteria required to establish *prima facie* obviousness, namely that "all the claim limitations must be taught or suggested by the prior art". *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). MPEP §2143.03.

Claims 2 and 14 are patentable over Reinprecht '620 in view of the Examiner's assertion of well-known prior art for all the reasons set forth above in addition to all the reasons set forth above with respect to independent claims 1 and 10 upon which they respectively depend. The rejection of claims 2 and 14 under 35 U.S.C. §103(a) should be overturned.

#### Claim 15

Reinprecht '620, even expanded and extended as proposed by the Examiner, does not disclose or suggest the training method as called for in claim dependent claim 15 which calls for operating the one or more simulated opponents to comprise "... operating one or more simulated opponents to simulate one or two tennis players moving to a plurality of locations on the opposite side of the tennis court" (emphasis added).

Neither Reinprecht '620, nor the Examiner's assertion of well-known prior art disclose or suggest operating one or more simulated opponents to simulate the play of one or more players moving to a plurality of locations on the opposite side of the tennis court. Reinprecht '620 discloses only stationary targets placed at certain positions on a tennis court or playing surface. The Examiner's assertion of well-known prior art to modify Reinprecht '620 does not include providing simulated opponents as that term is used by appellant in the application. As noted above in VII. Summary of Claimed Subject Matter, in this application, "opponents" can be persons or simulated opponents, *Application, p. 5, ¶[0022], ln. 9-10, Fig. 3, Application p. 6, ¶[0023], ln. 3-4, Fig. 1, and Application, p. 15, ¶[0032], ln. 1-4, Figs. 8-15*. "Simulated opponent" means a mechanical opponent, *Application, p. 15-24, ¶[0032-0039], Figs. 8-15*. The Examiner has provided no evidence suggesting or disclosing operating one or more simulated (i.e. mechanical) opponents to simulate the play of one or more tennis players moving to a plurality of locations on the tennis court.

Accordingly, the combination of Reinprecht '620 and the Examiner's assertion of well-known prior art does not suggest or disclose the invention of claim 15. Thus, Reinprecht, as modified by the Examiner's assertion of well-known prior-art, fails to satisfy the third criteria required to establish *prima facie* obviousness, namely that "all the

claim limitations must be taught or suggested by the prior art”. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). MPEP §2143.03.

Claim 15 is patentable over Reinprecht ‘620 in view of the Examiner’s assertion of well-known prior art for the reasons set forth above in addition to all the reasons set forth above with respect to independent claim 10 and dependent claim 14 upon which claim 15 directly and indirectly depends. The rejection of claim 15 under 35 U.S.C. §103(a) should be overturned.

#### Claim 16

Reinprecht ‘620, even expanded and extended as proposed by the Examiner, does not disclose or suggest the training method as called for in claim dependent claim 16 which calls for the simulated opponents to comprise “... a plurality of stationary simulated opponents located in selected locations on the opposite side of said tennis court and said step of operating said one or more simulated opponents comprises operating selected ones of said simulated opponents to cause an opponent to selectively appear at said one or more of said locations” (emphasis added).

Neither Reinprecht ‘620, nor the Examiner’s assertion of well-known prior art disclose or suggest a plurality of stationary simulated opponents located in selected locations on the opposite side of the tennis court and the step of operating one or more simulated opponents comprises operating selected ones of the simulated opponents to cause an opponent to selectively appear at one or more locations on the opposite side of the tennis court. Reinprecht ‘620 discloses only stationary targets placed at certain positions on a tennis court or playing surface. The Examiner’s assertion of well-known prior art to modify Reinprecht ‘620 does not include providing simulated opponents as that term is used by appellant in the application. As noted above in VII. Summary of Claimed Subject Matter, in this application, “opponents” can be persons or simulated opponents, *Application*, p.5, ¶[0022], *ln. 9-10, Fig. 3, Application* p.6, ¶[0023], *ln. 3-4, Fig. 1, and Application*, p. 15, ¶[0032], *ln. 1-4, Figs. 8-15*. “Simulated opponent” means a mechanical opponent, *Application*, p. 15-24, ¶[0032-0039], *Figs. 8-15*. The Examiner

has provided no evidence suggesting or disclosing operating one or more simulated (i.e. mechanical) opponents to cause an opponent to selectively appear at one or more locations on the opposite side of the tennis court.

Accordingly, the combination of Reinprecht '620 and the Examiner's assertion of well-known prior art does not suggest or disclose the invention of claim 16. Thus, Reinprecht as modified by the Examiner's assertion of well-known prior-art fails to satisfy the third criteria required to establish *prima facie* obviousness, namely that "all the claim limitations must be taught or suggested by the prior art". *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). MPEP §2143.03.

Claim 16 is patentable over Reinprecht '620 in view of the Examiner's assertion of well-known prior art for the reasons set forth above in addition to all the reasons set forth above with respect to independent claim 10 and dependent claims 14 and 15 upon which claim 16 directly and indirectly depends. The rejection of claim 16 under 35 U.S.C. §103(a) should be overturned.

#### Claim 17

Reinprecht '620, even expanded and extended as proposed by the Examiner, does not disclose or suggest the training method as called for in claim dependent claim 17 which calls for the simulated opponents to comprise "... one or more movable simulated opponents and said step of operating said one or more simulated opponents comprises operating selected ones of said simulated opponents to move said one or more simulated opponents to selectively appear at one or more of a plurality of locations on the opposite side of the tennis court" (emphasis added).

Neither Reinprecht '620, nor the Examiner's assertion of well-known prior art disclose or suggest a plurality of movable simulated opponents and the step of operating one or more simulated opponents comprises operating selected ones of the simulated opponents to move the one or more simulated opponents to selectively appear at one on more of a plurality of locations on the opposite side of the tennis court. Reinprecht '620

discloses only stationary targets placed at certain positions on a tennis court or playing surface. The Examiner's assertion of well-known prior art to modify Reinprecht '620 does not include providing simulated opponents as that term is used by appellant in the application. As noted above in VII. Summary of Claimed Subject Matter, in this application, "opponents" can be persons or simulated opponents, *Application*, p.5, ¶[0022], ln. 9-10, Fig. 3, *Application* p.6, ¶[0023], ln. 3-4, Fig. 1, and *Application*, p. 15, ¶[0032], ln. 1-4, Figs. 8-15. "Simulated opponent" means a mechanical opponent, *Application*, p. 15-24, ¶[0032-0039], Figs. 8-15. The Examiner has provided no evidence suggesting or disclosing operating one or more movable simulated (i.e. mechanical) opponents to cause an one or more of the simulated opponents to selectively appear at one or more locations on the opposite side of the tennis court.

Accordingly, the combination of Reinprecht '620 and the Examiner's assertion of well-known prior art does not suggest or disclose the invention of claim 17. Thus, Reinprecht as modified by the Examiner's assertion of well-known prior-art fails to satisfy the third criteria required to establish *prima facie* obviousness, namely that "all the claim limitations must be taught or suggested by the prior art". *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). *MPEP* §2143.03.

Claim 17 is patentable over Reinprecht '620 in view of the Examiner's assertion of the prior art for the reasons set forth above in addition to all the reasons set forth above with respect to independent claim 10 and dependent claims 14 and 15 upon which claim 17 directly and indirectly depends. The rejection of claim 17 under 35 U.S.C. §103(a) should be overturned.

### **CONCLUSION**

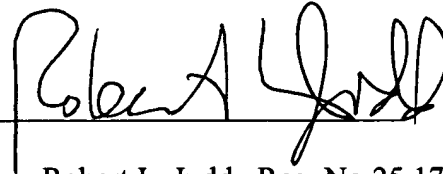
In view of the foregoing, it is submitted that the continuing rejection of claims 1-4 and 10-17 is improper and should not be sustained. Therefore, a reversal of the rejection of claims 1-4 and 10-17 is respectfully requested.

Respectfully submitted,

ERVIN WAGNER

Dated: December 11, 2006

By:

A handwritten signature in black ink, appearing to read "Robert L. Judd", written over a horizontal line.

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**X. CLAIMS APPENDIX**

1. A method for training sports skills for a game conducted on a playing surface that includes striking a game object away from an opponent comprising:  
  
    sequentially projecting a plurality of game objects toward one portion of said playing surface for striking by one or more players being trained; and  
  
    sequentially causing one or more opponents to appear at one or more locations on said playing surface in connection with projection of a game object to train said player to strike game objects away from an opponent.
2. The method of training sports skills of claim 1 wherein said step of sequentially causing said one or more opponents to appear comprises operating one or more simulated opponents to simulate the play of one or more players having a selected skill level.
3. The method of training sports skills of claim 1 wherein said step of sequentially projecting a plurality of said game objects comprises a machine for sequentially projecting a plurality of game objects toward said one portion of said playing surface for striking by said one or more players being trained.
4. The method of training sports skills of claim 1 wherein said game is selected from a group including ice hockey, soccer, tennis and volleyball.
10. A method for training tennis skills of a tennis player comprising:

sequentially projecting a plurality of tennis balls toward one side of a tennis court for return by said tennis player; and

sequentially causing one or more opponents to appear at one or more locations on the opposite side of said tennis court in connection with projection of a tennis ball to train said tennis player to return tennis balls away from an opponent thereby teaching said tennis player to play the tennis court and training placement memory in the brain of said tennis player in addition to training muscle memory by returning said tennis balls.

11. The method of training tennis skills of claim 10 wherein said step of sequentially projecting a plurality of tennis balls comprises a trainer sequentially hitting a plurality of tennis balls toward said one side of a tennis court.
12. The method of training tennis skills of claim 10 wherein said step of sequentially causing one or more opponents to appear at one or more locations on the opposite side of said tennis court comprises a trainer directing one or more persons to selectively occupy one or more locations on said opposite side of said tennis court.
13. The method of training tennis skills of claim 10 wherein one or more tennis ball machines project said plurality of tennis balls, and said step of sequentially projecting a plurality of tennis balls includes projecting said tennis balls in selected combinations of direction, speed, elevation and spin.



14. The method of training tennis skills of claim 10 wherein said step of sequentially causing one or more opponents to appear comprises operating one or more simulated opponents to simulate the play of one or more tennis players having a selected skill level.
15. The method of training tennis skills of claim 14 wherein said step of operating said one or more simulated opponents comprises operating one or more simulated opponents to simulate one or two tennis players moving to a plurality of locations on the opposite side of the tennis court.
16. The method of training tennis skills of claim 15 wherein said simulated opponents comprise a plurality of stationary simulated opponents located in selected locations on the opposite side of said tennis court and said step of operating said one or more simulated opponents comprises operating selected ones of said simulated opponents to cause an opponent to selectively appear at said one or more of said locations.
17. The method of training tennis skills of claim 15 wherein said simulated opponents comprise one or more movable simulated opponents and said step of operating said one or more simulated opponents comprises operating selected ones of said simulated opponents to move said one or more simulated opponents to selectively appear at one or more of a plurality of locations on the opposite side of the tennis court.

**XI. EVIDENCE APPENDIX**

No evidence has been entered by the Examiner or Appellant into the record.

**XII. RELATED PROCEEDINGS APPENDIX**

There being no decision rendered by a court or the Board in any related proceeding, none is listed here.